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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding. Cox believes actual competition must precede streamlined regulation if ratepayers are to be protected and are to fully realize the benefits of competition in the telecommunications market. The Commission must proceed with caution in deciding whether, and how much, additional pricing flexibility should be granted to local exchange carriers ("LECs") under any revision of the price cap plan.

I. INTRODUCTION

The LEC comments attempt to demonstrate the presence of significant local exchange competition and argue that LECs should be relieved of the burdens of price cap regulation. LEC claims of competition, however, ignore the fundamental difference between LECs and their competitors and ignore the importance of protecting telephone ratepayers in markets where competition does not yet exist.

It is vital that the Commission not confer on LECs the benefits of unwarranted pricing flexibility in advance of the onset of actual, sustainable competition that will benefit consumers. LECs already possess significant pricing flexibility under the current price cap rules and the Commission's Expanded

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Interconnection decisions.[1/] The comments, for example, cite LEC discounts greater than 70 percent for certain services under the existing rules.[2/] If telephone ratepayers are to be protected, the Commission must reject LEC claims that more flexibility is necessary to respond to competition. In addition the Commission cannot continue to deregulate LECs without considering the effect on the ability of future LEC competitors to enter the market and provide a viable range of services and choices for consumers.

The Commission's proposal for further LEC pricing deregulation contrasts sharply with the pervasive rate regulation imposed on cable operators. It is at the very least ironic that rate regulation of cable operators may significantly diminish, if not extinguish, the best hope for introducing facilities-based competition to LECs. Accordingly, the need to adopt LEC "transition" rules is not yet apparent if the most likely source of such competition is disabled, at least temporarily, from introducing such competition. In any event, the timetable for competition with the LECs is now unpredictable and certainly not yet evident. Accordingly, additional

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1/ See, e.g., Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) ("Special Access Order"). Although the co-location and fresh look requirements of the Special Access Order were remanded to the Commission in Bell Atlantic Telephone Co. v. F.C.C., Case No. 92-1619 (D.C. Cir. June 10, 1994), the court did not review the pricing flexibility granted to the LECs. Under the proposal advocated by Teleport Communications Group, LECs would retain this pricing flexibility if they continue to offer physical co-location voluntarily.

2/ See Comments of Intermedia Communications of Florida at 3.

LEC deregulation at this stage in the development of the competitive local telecommunications is contrary to the public interest.

II. A MARKET IS NOT COMPETITIVE UNTIL COMPETITORS ACTUALLY PROVIDE A FULL RANGE OF LEC SERVICES

The Notice requested comment on determining when competition exists; how it should be measured; and what effect the existence of competition should have on LEC price cap regulation. The LECs filed comments asserting that competition already exists, and that full and immediate pricing flexibility is in the public interest.[3/]

LECs must not be granted the benefits of additional pricing flexibility without first establishing that the local market is competitive. Certain factors must be present prior to any Commission finding that local competition in fact exists.

First, competitors must be authorized by federal, state and local authorities to provide the full range of services provided by incumbent LECs. Presently, only a handful of states permit competition for switched local services. No non-LEC has authority to provide competitive residential services. Consequently, competitive access providers ("CAPs") and other potential LEC competitors are at a competitive disadvantage because they cannot provide consumers the full range of switched services offered by the incumbent LEC.[4/] Until that disadvantage is

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3/ LEC comments also advocated the immediate elimination of Price Cap sharing and refund mechanisms as disincentives to network investments.

4/ See Comments of MFS at 44.

removed, CAPs offer consumers no comparable alternative and competition does not exist. Moreover, a putative competitor cannot make a rational, cost-effective decision to invest in switching facilities until those facilities can be used to provide switched local exchange service as well as interstate services.[5] Therefore, in states where CAPs are prohibited from providing switched local services, it is unlikely that a CAP will make the investment necessary to compete in the market for interstate switched access services.

Assuming present legal barriers to entry are removed,[6] competitive entry will not be economically feasible if the incumbent LEC can selectively reduce its rates in response to the introduction of competition. The comments demonstrate that the current regulatory framework provides LECs ample ability to respond to emerging competition.[7] Unless all barriers to entry are removed and competitors are given the opportunity to establish a foothold in the market, pricing flexibility for LECs will continue to be a "significant barrier to competitive entry."[8]

5/ See Comments of Time Warner at 10.

6/ Beyond basic certification, legal authority to provide competitive local services must include interconnection, unbundling and numbering policies that eliminate a LEC's ability to impose unreasonable costs on its competitors. Without appropriate policies on these issues, it will not be economically feasible to offer a local service in competition with the LEC.

7/ For example, the Commission's Expanded Interconnection rules provide LECs with substantial flexibility to lower special access rates under a zone density pricing plan that permits the LECs to target high volume customers with significant discounts.

8/ Comments of Intermedia at 3.

Another factor essential in demonstrating that a market is competitive is the presence of a competitor with facilities in place that actually are used to provide competitive service. Potential competition from cable operators and future wireless providers is not yet a sufficient check on LEC prices to justify further streamlined regulation. LEC arguments to the contrary cannot be reconciled with the realities of the market and must be rejected by the Commission.

PacBell, for example, argues that cable operators are a major source of competition for LECs.[9/] While Cox hopes and expects that this may be a realistic future projection, it is a wildly inaccurate characterization of the state of cable competition today. As an initial matter, the current capital constraints on cable operators brought about by the Commission's cable rate regulation will have an adverse effect on cable operators' ability to offer telecommunications services, making future competition unpredictable.

No cable operator may yet lawfully provide basic local exchange service to residential customers.[10/] Cable operators also are at a significant disadvantage because cable franchises do not duplicate the ubiquitous service areas of

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9/ See Comments of PacBell at 79-82; See also Comments of USTA at 30-31.

10/ A subsidiary of Southwestern Bell is among the first cable operators to request authority to provide commercial residential telecommunications service over a cable system. Approval of Southwestern Bell's application to provide local exchange service in Montgomery County, Maryland is expected to take over a year and the application states that it will be five years before ubiquitous service is available.

local and regional LEC networks.[11/] At least one LEC has characterized cable systems as "poorly suited to provide switched, two-way telephone services to individual customers."[12/] Accordingly, the presence of cable systems within a LEC's service area provides no evidence of competition until consumers have available to them a choice of competitive telecommunications services.

Finally, it will be many years before personal communications services ("PCS") licensees are in any position to provide a competitive threat to wireline local exchange services. PCS licenses will be sold at auction, reportedly beginning at the end of this year. License applications must then be filed by auction winners, licenses issued and systems built. Before service can begin, PCS licensees must relocate incumbent microwave operators that block large portions of the spectrum to be made available for licensed PCS, particularly in major metropolitan areas. In order to be successful, PCS licensees must establish wide service coverage areas that offer an attractive alternative to incumbent cellular operators. Only after each of these challenges are met will a PCS licensee be in a position to determine whether it can compete economically against the LEC local exchange. In short, the prospect of PCS

11/ This lack of ubiquity has severe competitive consequences. For example, although a small group of interexchange carriers ("IXCs") represent most of the demand for access services, these IXCs provide ubiquitous services and demand ubiquitous access to customers. Cable systems have neither the service area breadth nor the subscriber penetration of existing LEC networks and therefore are less desirable to access customers.

12/ Bell Atlantic's Request for an Expedited Waiver Relating to Out of Region Interexchange Services and Satellite Programming Transport, Affidavit of Brian D. Oliver at 4 (filed January 20, 1994).

providing competition to the LECs is unpredictable and certainly provides no current basis to grant LECs additional pricing flexibility.

III. THE LEVEL OF COMPETITION IN A GEOGRAPHIC MARKET SHOULD DICTATE THE LEVEL OF LEC PRICING FLEXIBILITY

Once minimum criteria for competition have been identified and satisfied, the level of regulation imposed on a LEC should reflect the actual level of competition in a market. The relative market share of competitors is a critical factor in making this determination. Market share is a useful measure of competition in a market dominated by a single provider because it demonstrates that customers have a real choice of service providers. When a substantial level of customer acceptance is reached by new entrants (as evidenced by market share), regulatory streamlining may be considered. Similar to the Commission's approach in the interexchange market, full deregulation of LEC pricing, however, would not be appropriate until a high threshold of customer acceptance of new entrants is reached.

USTA proposes a measure of market power that focuses on whether a customer's demand is "addressable" by a competitor, rather than whether customers actually take service from LEC competitors.[13/] Under this standard, a LEC would have "freedom to respond to competition as it emerges." The USTA proposal encourages anticompetitive behavior and should be rejected.

13/ USTA has proposed a system under which LECs would be granted additional pricing flexibility for access services as soon as a "substitutable" service was offered in a service area. LEC access charges would be deregulated if 25 percent of customers in the area had a competing service available and 25 percent actively sought to use non-LEC access services. Comments of USTA at 62-66.

The "freedom" of a LEC selectively to respond to competitive entry has significant anticompetitive implications when that carrier has the level of market power possessed by the LECs.[14/] This is particularly true when a competitor's low market share may be the result of numbering, interconnection policies or other legal barriers that favor the LEC based solely on its status as a monopoly provider of local exchange services.[15/] There is no assurance in that case that a claimed LEC response to competition is nothing more than unvarnished predatory pricing.

Application of streamlined regulation that is tied to the growth of actual competition is the measured approach the Commission has taken in regulating AT&T in the interexchange market.[16/] AT&T's regulation was relaxed only when

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14/ "[W]hen AT&T offers to reduce its rates only to match the rate reductions of its competitors . . . AT&T's offering will have serious potential anticompetitive consequences." AT&T Communications (Tariff F.C.C. Nos. 1, 2 and 9), 6 FCC Rcd 5675 (1991).

15/ Furthermore, the Commission should reject any trigger mechanism that does not take into account the competitive advantage LECs possess by virtue of the lack of "addressability" in other LEC markets.

16/ In streamlining AT&T's business services, the Commission relied primarily on supply and demand elasticities to determine whether markets were competitive. See Competition in the Interstate Marketplace, 6 FCC Rcd 5880 (1991). The Commission acknowledged that market share is evidence of demand elasticity. Id. at 5887. At the time it found that competition was sufficient to warrant streamlined regulation, AT&T's market share had dropped to 50%. Id. at 5889. Moreover, the Commission recently decided not to streamline AT&T's residential and small business services because "AT&T stills holds by far the largest market share of these [IXC] carriers. Since 1989, AT&T has continued to provide about 60 percent of interstate minutes." Price Cap Performance Review, 8 FCC Rcd 5165, 5167 (1993). Furthermore, the access market is less supply elastic than the interexchange market because competitors must build out their existing facilities before they can offer service to new customers.

real competitors offered real alternatives to AT&T's business services. Cox submits that this approach is far more realistic and sensitive to the presence of actual competitive alternatives than is USTA's "addressability" proposal.

IV. COMPETITION IS THE BEST WAY TO ENCOURAGE INFRASTRUCTURE DEVELOPMENT

The Commission requests comment on whether the price cap plan should be revised to support the development of a national information infrastructure. Cox supports those comments suggesting that the best way to encourage infrastructure investment is by developing and sustaining policies that encourage telecommunications competition.[17/] These comments demonstrate that an important factor motivating infrastructure investment by LECs is the promise or presence of competitors. Furthermore, most large LECs already have announced plans to spend billions of dollars upgrading their facilities to provide video dialtone and other new services.[18/] There is no need to offer special incentives to LECs to invest in improved facilities and services.[19/]

17/ See Comments of Teleport at 6; Ad Hoc Users at 11.

18/ Because upgraded LEC facilities will be used to provide video dialtone and other non-telephone services, many parties have questioned whether telephone ratepayers will shoulder an unfair share of these costs. In light of these concerns, additional incentives for LEC investment would not be in the public interest.

19/ If the Commission believes incentives are necessary to assure universal service or to provide particular services, such incentives should be available to all telecommunications providers on a nondiscriminatory basis.

V. CONCLUSION

Cox recognizes that regulation of LECs must reflect continuing developments in the telecommunications competition. Nevertheless, the Commission must be certain that it will not harm telephone ratepayers or the development of competition by providing LECs additional regulatory flexibility before a competitive market for all LEC services is allowed to develop. This cannot happen until legal, technical and economic barriers to competition have been removed and customers are provided with a real choice between competing service providers.

Respectfully submitted,

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